

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KILTER INDUSTRIES, INC.,

Plaintiff,

-v-

AVON PRODUCTS, INC. and PETER
WAXMAN,

Defendants.

No. 09 Civ. 3490 (RJS)

ORDER

NEW YORK
DOCUMENT
ELECTRONICALLY FILED
DOC #:

FILED: 6/17/09


RICHARD J. SULLIVAN, District Judge:

Pursuant to the briefing schedule set by the Court on May 18, 2009 (Doc. No. 7), Plaintiff filed its opposition papers to Defendants' motion to dismiss on June 16, 2009 (Doc. Nos. 19-21). In its thirty-page memorandum of law, Plaintiff argues that certain documents submitted by Defendants, as well several "unsupported factual assertions," should not be considered by the Court in a motion to dismiss pursuant to Rule 12(b)(6). (Doc. No. 20 at 3-6.) However, Plaintiff's submission has been improperly docketed as a "cross-motion."

The Court will address the parties' arguments regarding the materials that are properly before the Court on a motion to dismiss when resolving Defendants' motion. Accordingly, although Plaintiff's memorandum of law is properly filed and shall remain on the docket, the Clerk of the Court is respectfully directed to terminate the motion designation currently displayed for document number 19.

SO ORDERED.

Dated: June 17, 2009
New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE